IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23524 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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ABDUL RAZZAK HAJI LATIF MEMON - Petitioner(s)
Versus
JYOTIBEN RATILAL PATEL & 1 - Respondent(s)

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Appearance :
MR MTM HAKIM for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MR AJ PATEL for Respondent(s) : 1,
MR DIPEN C SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 05/03/2007

ORAL JUDGMENT

1. Rule. The learned advocate for the respondents waives service of Rule.

2. Abdul Razzak Haji Latif Memon, petitioner has filed this petition under Article 227 of Constitution of India with a prayer that this Court may be pleased to quash and set aside the impugned order dated 12/5/2006 passed by the Court of learned Fourth Additional Senior Civil Judge, Vadodara below Application Exhibit.5 and Exhibit.18 in Regular Civil Suit No.1141 of 2003 and thereby be pleased to quash and set aside the judgment and order dated 8/11/2006 passed by the Court of Learned Presiding Officer, Fast Track Court No.9, Vadodara in Misc. Civil Appeal Nos.113 of 2006 and 114 of 2006. Petition was filed on 15/11/2006. This Court has passed an order on 1/12/2006 and issued notice. Pursuant to the notice, the respondent no.1, Jyotiben Patel has filed affidavit dated 8/1/2007 from page 139 to 151 and On behalf of respondent no.2, Harshad B.

Patel has filed affidavit on 8/2/2007 at page 199.

3. Mr.M.T.M.Hakim, learned advocate for the petitioner has made following submissions:

3.1) The petitioner is the Managing Director and Administrator of Arti Estate Pvt. Ltd., engaged in purchasing the lands, developing them and thereafter transecting the same. Earlir Navinbhai Dahyabhai Patel was the Managing Director and Administrator of the said Company. On 5/5/2004, Navinbhai Dahyabhai Patel expired.

3.2) On 22/4/2004 resolution passed appointing the petitioner Abdul Razzak Haji Latif Memon as the Managing Director and Administrator.

3.3) On 14/5/1981, the petitioner company purchased land being revenue survey nos. 345, 346, 347, 348, 349, 351, 352, 353, 354, 367, 373 and 275 situated in the sim of village Pipalia of Waghodia Taluka, District-Vadodara. The suit

lands purchased in the name of Abidabibi Bashirahed Bala the defendant no.2, wife of one of the Directors of the petitioner company.

3.4) On 28/7/1981 permission for non-agriculture use of suit lands was granted by the Taluka Development Officer, Vadodra.

3.5) On 8/11/1983, the Mamlatdar and ALT rejected the application to mutate the name of the defendant no.23 as the owner of the suit lands.

3.6) On 31/8/1986, the order of the Mamlatdar and ALT was challenged by way of Appeal Nos.39, 40 and 41/1986, which came to be rejected.

3.7) On 31/12/2001, against the said order Revision being No.1051/86 was preferred before the Gujarat Revenue Tribunal, which was allowed, as the transaction was held to be violation of the provisions of the Tenancy Act, more particularly the issue of 8 Km., in pursuance to the Resolution

passed by the Government dated 24/4/01. the same was registered as Ganot Case No.2637/83 and Remand Case No.70/02.

3.8) On 5/1/2004, the Mamlatdar and ALT passed orders withdrawing Tenancy Case.

3.9) On 25/11/2003, on becoming aware regarding aforesaid transaction the petitioner preferred Regular Civil Suit No.1141 of 2003 seeking declaration and inunction against the said registered Sale-deed dated 10/3/2003.

3.10) Abdul Razzak Haji Latif Memon, petitioner -original defendant has filed a suit being Civil Suit No.1141 of 2003 against Jyotiben and Abedabibi, defendant no.1 and 2 respectively who are present respondents in this behalf. On 25/11/2003, in the suit, the plaintiff has prayed for declaration and also for injunction against defendant regarding possession of the suit property. When the said suit was filed, the Trial

Court has passed an interim order on 25/11/2003 below Exh.5 regarding maintenance of status quo of the said property. It is the case of the respondent no.1 that on that day, possession of the property was with the defendant no.1. Therefore, the said order did not affect the defendant. When the suit was filed, the defendant no.1 has also filed counter application Exh.18 that they are in possession. Thereafter, both the applications below Exh.5 and Exh.18 were heard by the learned Trial Judge. The learned Trial Judge by his judgment and order dated 12/5/2006, pleased to pass following order below Exh.5 and Exh.18:

> 3.10(A). “The application Exh.5 is hereby rejected.
>
> The initial order passed on 25/11/2003 below Exh.5 regarding maintenance of status quo over the suit property is hereby vacated.
>
> The application for counter injunction at Exh.18 is hereby allowed and plaintiffs, their agents, servants, man are hereby restrained from disturbing the possession of the defendants and not to sale, gift or transfer and from taking produced of the suit land till the final disposal of the suit.”

3.11) Being aggrieved and dissatisfied with the said judgment and order, Abdul Razzak Haji Latif Memon has filed appeal being Civil Appeal No.113 of 2006 and Civil Appeal No.114 of 2006 under Order 43 Rule (1) (r) of Civil Procedure Code somewhere on 12/6/2006. The matter was heard by the Appellate Court. The Appellate Court by his judgment and order dated 8/11/2006 pleased to dismiss the appeal:

> 3.11(A). “Misc. Civil Appeals No.113 of 2006 and 114 of 2006 filed against the impugned common order of the Ld. Civil Judge passed in R.C.S. No.1141/03 below Exh.5 and 18 dated 12.5.2006 are hereby dismissed with costs and the said impugned order of the Ld. Civil Judge is hereby confirmed on the basis of the reasons given by this appellate Court.”

3.12) Being aggrieved and dissatisfied with the said judgment and order, present petition is filed before this Court on 15/11/2006 and this Court has passed an order on 1/12/2006 and issued notice. Pursuant to the notice, the respondent no.1-Jyotiben has filed affidavit dated 8/1/2007. With consent of the parties, matter has been taken up for final disposal in this behalf.

4. The facts regarding filing of suit has already been stated earlier in this behalf. The learned advocate for the petitioner stated that the reasoning of the learned Trial Judge is contrary to and inconsistent with the record of the case and therefore, this Court may interfere with the order passed by the Lower Court in this behalf.

5. I have also heard Mr.A.J.Patel, learned advocate for the respondent no.1 and Mr.Dipen Shah, learned advocate for the respondent no.2.

6. Mr.A.J.Patel, learned advocate for the respondent no.1 has stated that the learned Trial Judge in his judgment made following findings:

6.1) There are land being survey no.345, 346, 347, 348, 349,351,352, 353, 354, 367, 373 and 375 situated in the sim of village Pipalia, Waghodia Taluka, District-Vadodara (herein after referred to as 'the suit land'). The said land is

agriculture land in this behalf.

6.2) From the record, it appears that suit property was originally cultivating by one Smt. Indiraben K. Shah. She has sold the said property to Abidabibi, respondent no.2 by registered sale-deed dated 14/5/1981. Thereafter, Abidabibi, respondent no.2 has sold the said land to Jyotiben by registered sale-deed dated 10/3/2003. The said sale deed is produced on record of the case. In para 2 of the said sale-deed, it is also stated that the land is sold to respondent no.1 by respondent no.2 long back by an agreement of possession dated 8/12/2005.

6.3) That the defendant no.2 i.e. respondent no.2 herein has become real owner and occupant of the suit land.

6.4) That defendant no.2 respondent no.2 sold the suit land to defendant no.1.

6.5) That as per possession receipt at Mark 65/1, possession of the suit land was handed over by defendant no.2 to defendant no.1 in the year 1985.

6.6) That defendant no.1 is in possession of the suit land on the date of the suit.

6.7) That though the plaintiff company has produced documents of village form No.7 & 12 and 8A in order to prove that it has purchased the suit land, there is no entry effected in the said documents showing the name of the plaintiff company.

6.8) That the plaintiff company has failed and neglected to prove that the transaction in question is a Benami transaction as Abedabibi is not a fiduciary or co-parcener.

6.9) That Mutation entry no.1449 shows that defendant no.1 is the owner and in possession of the suit land.

6.10) That N. A. permission granted earlier was cancelled and, therefore, the suit land continued to be agricultural land and therefore it was sold to defendant no.1.

6.11) That the plaintiff has miserably failed to prove his prima facie case.

6.12) That since the plaintiff has not proved his prima facie case, it cannot be said that if the injunction is not granted, the plaintiff will suffer a grant loss.

6.13) That prima facie it appears that defendant no.1 has a right and is in possession of the suit land.

6.14) That since the plaintiff has failed to prove his prima facie case, the story about power of attorney and subsequent transactions cannot be believed.

6.15) That the balance of convenience and irreparable loss are not in favour of the plaintiff, but are in favour of defendant no.1 as the learned Trial Judge by his judgment and order dated 12/5/2006, pleased to pass following order below Exh.5 and Exh.18:

> "The application Exh.5 is hereby rejected.
>
> The initial order passed on 25/11/2003 below Exh.5 regarding maintenance of status quo over the suit property is hereby vacated.
>
> The application for counter injunction at Exh.18 is hereby allowed and plaintiffs, their agents, servants, man are hereby restrained from disturbing the possession of the defendants and not to sale, gift or transfer and from taking produced of the suit land till the final disposal of the suit."

7. Thereafter, the appeal was filed by the petitioner and the Appellate Court has also come to the following findings:

7.1) That prima facie it can be said on the basis of the admitted facts, disputed facts and the documentary evidence produced by both the sides

that the suit properties are not really owned by the plaintiff company; and are owned by the defendants.

7.2) That though the plaintiff company's case is that is had purchased the suit land in the name of defendant no.2 i.e. wife of one of the Directors of the plaintiff company, the plaintiff has not produced any resolution passed by it in that behalf.

7.3) That on the basis of the alleged power of attorney of defendant no.2 produced at mark M-4/33, it cannot be said prima facie that defendant no.2 has admitted the ownership of the land to be of the plaintiff.

7.4) That on the basis on the recitals made in the sale-deeds produced on behalf of the plaintiff it can be said that the plaintiff it self has admitted me ownership of the suit land to be of defendant no.2.

7.5) That merely because the original sale-deed is in the custody of the plaintiff, it cannot be said that the plaintiff is the owner of the suit property.

7.6) That merely because N.A. permission was obtained by the plaintiff company and it had contested the proceedings before the RTS authorities, it cannot be said hat the plaintiff is the owner of the suit property.

7.7) That there is no documentary evidence to show prima facie that the suit property is owned by the plaintiff.

7.8) That on the contrary, the documentary evidence produced by both the sides including revenue record, sale-deeds, N.A. permission and R.T.S. orders prima facie shows that defendant no.2 is the owner of the suit properties and the plaintiff is not the owner.

7.9) That ultimately the findings recorded by the learned Trial Judge are quite proper and legal and are not perverse.

8. On behalf of respondent no.2, Mr.Harshad B. Patel has also filed affidavit. In the said affidavit, it has been stated that respondent no.2 has purchased the suit property by registered sale-deed dated 14/5/1981 from the original owner of the land-Indiraben Kanhaiyalal Shah for consideration of Rs.3,75,000/-. That respondent herein have paid the consideration for the purchase of the said land from her own saving and he denied the fact that purchase consideration for said purchase was arranged by the petitioner company. He has further denied that the purchase of land at aforesaid revenue survey numbers was at the behest of petitioner company. He has further stated that power of attorney at Annexure-E to the petition is a false, concocted and forged document produced by the petitioner and that the present respondent has

at no point of time executed such power of attorney in the favour of Naveen D. Patel. It was further stated that the respondent herein is not aware of any registered sale-deed made by the petitioner company in favour of anybody. It was submitted that the revenue records and extract of 7/12 does not contain or reflect the possession of land of any such individuals who purchased the land from the petitioner company moreover the record of rights also does not have any corresponding entry to the same effect.

9. It is further stated that respondent herein never executed any power of attorney in favour of the petitioner company i.e. Aarti Estate Pvt. Ltd. and hence the petitioners does not have locus standi to prefer regular civil suit no.1141 of 2003. From the perusal of the power of attorney it is clear that even if it is presumed that such power of attorney was executed, such power of attorney could have been executed in giving exclusive powers only to Venus Constructions which is a distinct legal

entity from the petitioner company. Naveenbhai Patel left for the heavenly abode on 11/4/2004 without leaving behind any survivors or heirs to Venus construction.

10. It is further stated that the power of attorney which is the sole document relied on by the petitioner for claiming its ownership over the suit land does not witness the revenue survey numbers of the lands to which the power of attorney pertains and hence it cannot be presumed that the said power of attorney was executed to manage the affairs pertaining to the suit land.

11. It is further stated that the permission dated 28/7/1981 granted by Taluka Panchayat, Wagholia was not the permission to put the suit land for non-agriculture purpose but was only the permission to use the land temporarily for storing bricks, cement etc. Hence, the suit lands were never non-agriculture lands and hence transfer of agriculture land made by the petitioner in favour of third

parties is null and void and in contravention and breach of the mandatory provisions of Bombay Land Revenue Code. The petitioners have not produced any proof evidencing the fact that when it had parted with the interest in the suit land with third parties the said land was a Non-agriculture old tenure land, hence petitioners have no prima facie case.

12.It is further stated that by registered sale-deed dated 10/3/2003 right title and interest of the suit lands have been transferred in favour of respondent no.1. In view of this, the petitioner has no case in this behalf.

13.In view of this facts and circumstances of the case, though the petitioner has stated that they are in possession of the land in question, particularly it appears that petitioner is not owner of the said property as the Appellate Court by his judgment and order dated 8/11/2006 pleased to dismiss the appeal which is as follows:

> “Misc. Civil Appeals No.113 of 2006 and 114 of 2006 filed against the impugned common order of the Ld. Civil Judge passed in R.C.S. No.1141/03 below Exh.5 and 18 dated 12.5.2006 are hereby dismissed with costs and the said impugned order of the Ld. Civil Judge is hereby confirmed on the basis of the reasons given by this appellate Court.”

14. The learned counsel for the respondent herein therefore, submitted that when both the Appellate Court and Trial Court has arrived at the conclusion that the owner of the property in question is respondent herein and in view of the judgment of the Apex Court in the case of Surya Dev Rai v. Ram Chander Rai and others, reported in (2003) 6 SCC 675, this Court may not interfere with the order passed by the Court below as the Courts have passed the order within their jurisdiction and there is no error of law or jurisdiction in this behalf.

15. In view of the limited jurisdiction, if the following order is passed, the same may be in the interest of justice:

15.1) The learned Trial Judge is requested to hear and disposed of the entire suit as expeditiously as possible but not later than one year i.e. by 31/3/2008.

15.2) All the advocates who are appeared before me state that all the parties appearing before the Trial Court will co-operate with the proceedings of the matter.

15.3) The learned Trial Judge may allow the parties to produce all documentary and oral evidence in this behalf.

15.4) The observations made by this Court will be binding on the Trial Court and appellate Court.

16.In view of this, Rule discharged. The Special Civil Application is disposed of accordingly.

(K.M.Mehta, J.)

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